

ADVISORY OPINION 2000-003

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

April 26, 2000

Mr. John Stephenson
P.O. Box 175885
Ft. Mitchell, Kentucky 41017

Dear Mr. Stephenson:

This is in response to your March 27, 2000 request for an advisory opinion regarding whether you may use an Internet-based system to accept campaign contributions made via credit card. You indicate that you are a candidate for State Senate, District 11, and that you wish to use an “arms length” fundraising strategy that employs this technology. Specifically, you request a response to the following two (2) questions:

- (1) Does the Registry’s prior opinion, KREF Advisory Opinion 1995-003, extend to your campaign and the transaction you propose?
- (2) May your campaign use the online credit-card processing system (“Campaigncontribution.com”) provided by Aristotle Publishing, Inc., as described in the attachments submitted with your request? If not, may your campaign use another online credit-card processing system created by Skipjack that is currently offered as a service through Heritage Bank of Ft. Wright, Kentucky, with which your campaign depository is established?

(1) APPLICATION OF KREF ADVISORY OPINION 1995-003

KRS 121.150(4) provides that “[a] contribution made by cashier’s check or money order which identifies both the payor and payee shall be treated as a contribution made by check for purposes of the contribution limits contained in this section.” See also KRS 121.015(6)(a) (defining contribution generally). In KREF Advisory Opinion 1995-003, the Registry opined that, consistent with the “overriding intent of the statute,” a candidate could accept contributions via Visa or MasterCard:

[I]n the absence of any express or implied statutory prohibition for credit card transactions or any express provision of KRS Chapter 121 enumerating those acceptable methods of payment for contributions, we believe that payment of an otherwise valid contribution by Visa and MasterCard would be acceptable and would not violate the spirit of KRS Chapter 121 as long as the credit card slip provides the same information as that contained on a personal check. This would include the payor and the payee and the date of the contribution. Although credit card slips are not considered negotiable instruments, as are checks [under KRS 55.3-104], the practical distinction between checks and credit cards is becoming less significant.¹

Therefore, as interpreted by KREF Advisory Opinion 1995-003, a credit card transaction that clearly identifies both the payor and the payee and accurately reflects the date of the transaction, if otherwise valid, would constitute a contribution.

Nothing in KRS Chapter 121 prohibits the application of this interpretation to electronic credit card transactions via the Internet/World Wide Web (“WWW”). For purposes of KRS Chapter 121, there is no apparent distinction between a written credit card transaction and an electronic credit card transaction, provided the electronic transaction is otherwise valid and proof of the transaction clearly identifies the payor, payee and the transaction date.

Therefore, KREF Advisory Opinion 1995-003 may extend to the type of transaction posed by your letter.

(2) USE OF SPECIFIC ONLINE CONTRIBUTION PROCESSING SYSTEM

Your second question seeks an opinion regarding your campaign’s use of a specific system for online credit card contribution processing offered by either Aristotle Publishing, Inc. or Skipjack. Although the Registry will not seek to approve or reject any specific technology system a candidate chooses to employ, in addition to the response to Question (1) of this opinion, the following statutory guidelines regarding your use of an online credit card contribution processing system are offered:

ⁱ However, the Registry did not extend its opinion to contributions to gubernatorial campaigns, for which more specific guidelines apply. See KRS 121A.010(4)(defining qualifying contribution).

(a) KRS 121.160(2)(b) requires a campaign treasurer to maintain “detailed and exact accounts” of each contribution over one hundred dollars (\$100), including the contributor’s name, address, occupation, employer, spouse and spouse’s employer. A system of receiving online credit card contributions must offer a means for your campaign to gather and maintain these records.

(b) KRS 121.025 prohibits a corporation from contributing anything of value to a candidate, either directly or indirectly. KRS 121.150(22) prohibits a candidate from accepting a corporate contribution. Therefore, if the system vendor you choose is a corporation, your campaign must pay all applicable processing fees and the system must offer a means to separate funds contributed to your campaign from any corporate funds.

(c) KRS 121.220(1) requires a candidate to establish “one (1) primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures,” and provides that “[o]nly a financial institution authorized to transact business in Kentucky may be designated as a campaign depository.” Further the statute vests the oversight of such deposits and expenditures and the retention of the records of the transactions to the campaign treasurer. KRS 121.220(2). An online system that accepts and processes credit card contributions, less a processing fee and/or percentage of the contribution, must be capable of depositing the funds into a financial institution authorized to do business in Kentucky subject to the oversight of your campaign treasurer, as required under KRS 121.220.

(d) Under KRS 121.150, certain types of contributions are prohibited, including corporate contributions (KRS 121.150(22)), contributions from charitable organizations (KRS 121.150(2)), contributions from a federal campaign account (KRS 121.150(27)), contributions in excess of one thousand dollars (\$1,000) (KRS 121.150(6)), and contributions from minors in excess of one hundred dollars (\$100) (KRS 121.150(5)). A system of online contribution processing should include safeguards to prevent your campaign’s acceptance of illegal contributions.ⁱⁱ In addition, your campaign should implement internal screening procedures to insure that such contributions are not deposited into your campaign account or otherwise accepted by your campaign. See supra note ii.

(e) KRS 121.190(1) requires all advertising, including fund solicitations that constitute circulars, expressly advocating the election or defeat of a clearly identified candidate to include a disclaimer identifying who paid for the communication. The Registry has not addressed whether the term “circular” would extend to advertising

ⁱⁱ See, e.g., Federal Election Commission (“FEC”) Advisory Opinion Nos. 1999-9, 1999-22 and 1999-22A (discussing screening procedures required). Although the FEC’s opinions are not cited for authority regarding the application of Kentucky election law to the transaction you propose, the screening procedures discussed are instructive.

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distributed using the Internet/WWW; however, it is recommended that your online solicitation form include such a disclaimer.

Therefore, provided you choose a vendor that offers an online credit card contribution processing system meeting the foregoing criteria, the fundraising method you propose would be acceptable under KRS Chapter 121.

This opinion reflects the Registry's consideration of the specific transactions posed by your letter. If you have any additional questions, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/jh

Enclosures

Cc: Registry Members
Sarah M. Jackson, Executive Director
Paul Kilgore, Aristotle Publishing, Inc.